

## **Chapter 18**

### **Investments**

#### **31A-18-101 Scope -- Definitions.**

- (1) Except as otherwise provided in this title, this chapter and the rules adopted to implement it apply to all insurers authorized to do business in this state, including a reinsurer.
- (2) As used in this chapter, "cash" means a medium of exchange that a depository institution, as defined in Section 7-1-103, accepts for deposit and allows an immediate credit to an account in the depository institution, including the following in a depository institution:
  - (a) a savings account; or
  - (b) a certificate of deposit with a maturity date within one year or less from the day on which the certificate of deposit is acquired.

Amended by Chapter 257, 2008 General Session

#### **31A-18-102 Separate account investments.**

- (1) Except as provided under Subsection (2), each separate account established under Section 31A-5-217 shall be evaluated as a separate insurer to determine whether the account complies with Chapters 17, Determination of Financial Condition, and Chapter 18, Investments.
- (2) Except as provided under Subsection (3), the amounts allocated to each separate account, and accumulations thereon, may be invested and reinvested without regard to any requirements or limitations prescribed by Chapter 18, Investments.
- (3) To the extent that the corporation's reserve liability, with regard to benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of the account at least equal to the reserve liability shall be invested in accordance with this chapter, or in accordance with such requirements as the commissioner prescribes by rule.
- (4) Assets allocated to a separate account shall be valued at market value on the date of valuation, or, if there is no readily available market, then in accordance with the applicable contract. However, a portion of the assets of the account at least equal to the corporation's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (3), if any, shall be reported separately and valued in accordance with the rules otherwise applicable to the corporation's assets or in accordance with rules adopted under Subsection (3). No securities valuation reserve or other reserve for fluctuation in the value of securities is required for assets that do not have to comply with this chapter.

Enacted by Chapter 242, 1985 General Session

#### **31A-18-103 Protection against currency fluctuations.**

Any insurer whose business requires it to make payment in different currencies may have investments in securities in each of those currencies in an amount that, independently of all other investments, meets the requirements of the Insurance Code as applied separately to the insurer's obligations in each currency. The commissioner may by order require an insurer, or by rule require a class of insurers, to maintain these separate currency investments if the obligations in other currencies are large enough to present a problem of financial stability if there are substantial fluctuations in relative currency values.

Enacted by Chapter 242, 1985 General Session

**31A-18-105 Permitted classes of investments.**

The following classes of investment may be counted for the purposes specified under Chapter 17, Part 6, Risk-Based Capital:

- (1) a bond or other evidence of indebtedness of:
  - (a) a governmental unit in the United States or Canada;
  - (b) an instrumentality of a governmental unit described in Subsection (1)(a); or
  - (c) a private corporation domiciled in the United States;
- (2) an equipment trust obligation or certificate that is an adequately secured instrument:
  - (a) evidencing an interest in transportation equipment that is located wholly or in part within the United States; and
  - (b) with a right to receive determined portions of the rental, or to purchase other fixed obligatory payments for the use or purchase of the transportation equipment;
- (3) a loan secured by:
  - (a) one or more mortgages;
  - (b) one or more trust deeds; or
  - (c) another statutorily authorized type of security interest in real estate located in the United States;
- (4) a loan secured by a pledged security or evidence of debt eligible for investment under this section;
- (5) a preferred stock of a United States corporation;
- (6)
  - (a) a common stock of a United States corporation; or
  - (b) an American depository receipt if traded on one of the following exchanges:
    - (i) New York;
    - (ii) American; or
    - (iii) NASDAQ;
- (7) real estate that is used as the home office or branch office of the insurer;
- (8) real estate in the United States that produces substantial income;
- (9) a loan upon the security of the insurer's own policies in an amount that:
  - (a) is adequately secured by the policies; and
  - (b) does not exceed the surrender value of the policies;
- (10) a financial futures contract used for hedging and not for speculation, as approved under rules adopted by the commissioner;
- (11) an investment in a foreign security of a class permitted under this section as required for compliance with Section 31A-18-103;
- (12) an investment permitted under Subsection 31A-18-102(2);
- (13) an American depository receipt not traded on one of the following exchanges:
  - (a) New York;
  - (b) American; or
  - (c) NASDAQ;
- (14) an investment other than those listed in Subsections (1) through (13) that is determined to be admitted in the Accounting Practices and Procedures Manual, published by the National Association of Insurance Commissioners;
- (15) cash; and
- (16) another investment the commissioner authorizes by rule.

Amended by Chapter 257, 2008 General Session

**31A-18-106 Investment limitations generally applicable.**

- (1) The investment limitations listed in Subsections (1)(a) through (m) apply to an insurer.
  - (a) For an investment authorized under Subsection 31A-18-105(1) that is not amortizable under applicable valuation rules, the limitation is 5% of assets.
  - (b) For an investment authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.
  - (c) For an investment authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.
  - (d) For an investment authorized under Subsection 31A-18-105(4) that is considered to be an investment in a kind of security or evidence of debt pledged, the investment is subject to the class limitations applicable to the pledged security or evidence of debt.
  - (e) For an investment authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.
  - (f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:
    - (i) 20% of assets for a life insurer; and
    - (ii) 50% of assets for a nonlife insurer.
  - (g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:
    - (i) 5% of assets; or
    - (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 25% of assets.
  - (h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:
    - (i) 20% of assets, inclusive of home office and branch office properties; or
    - (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.
  - (i) For an investment authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.
  - (j) For an investment authorized under Subsection 31A-18-105(11), the limitation is the greater of that permitted or required for compliance with Section 31A-18-103.
  - (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a subsidiary includes:
    - (i) a loan, advance, or contribution to a subsidiary by an insurer; and
    - (ii) an insurer holding a bond, note, or stock of a subsidiary.
  - (l) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.
  - (m) For an investment authorized under Subsections 31A-18-105(13) and (14), the aggregate limitation is 10% of assets.
- (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each insurer.
  - (a)
    - (i) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:
      - (A) an investment in the government of the United States or its agencies;
      - (B) an investment guaranteed by the government of the United States;
      - (C) an investment in the insurer's insurance subsidiaries; or
      - (D) a cash deposit that:

- (I) is cash;
- (II) is held by a depository institution, as defined in Section 7-1-103, that:
  - (Aa) is solvent;
  - (Bb) is federally insured; and
  - (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total assets of at least 5%, if the depository institution is not a bank; and
- (III) does not exceed the greater of:
  - (Aa) .4 times the Tier 1 capital of the depository institution; or
  - (Bb) the amount insured by a federal deposit insurance agency.
- (ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall:
  - (A) define "Tier 1 leverage ratio";
  - (B) define "Tier 1 capital"; and
  - (C) proscribe the method to calculate Tier 1 capital.
- (b) An investment authorized by Subsection 31A-18-105(3) shall comply with the requirements listed in this Subsection (2)(b).
  - (i)
    - (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged, unless the excess over 80%:
      - (I) is insured or guaranteed by:
        - (Aa) the United States;
        - (Bb) a state of the United States;
        - (Cc) an instrumentality, agency, or political subdivision of the United States or a state; or
        - (Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or
      - (II) is insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.
    - (B) A mortgage loan representing a purchase money mortgage acquired from the sale of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).
  - (ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate may only be secured by:
    - (A) unencumbered real property that is located in the United States; or
    - (B) an unencumbered interest in real property that is located in the United States.
  - (iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold estate shall require that:
    - (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term;
    - (B) the real estate not be otherwise encumbered; and
    - (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.
  - (iv) Subject to Subsection (2)(b)(v):
    - (A) participation in a mortgage loan shall:
      - (I) be senior to other participants; and
      - (II) give the holder substantially the rights of a first mortgagee; or
    - (B) the interest of the insurer in the evidence of indebtedness shall be of equal priority, to the extent of the interest, with other interests in the real property.

- (v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is not considered to be encumbered within the meaning of this chapter by reason of a prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:
  - (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and
  - (B) the security created by the prior mortgage or trust deed is a first lien.
- (c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the market value of the collateral pledged, except that a loan upon the pledge of a United States government bond may be equal to the market value of the pledge.
- (d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.
- (e) An investment authorized under Subsection 31A-18-105(10) shall be in connection with a potential change in the value of specifically identified:
  - (i) asset that the insurer owns; or
  - (ii) liability that the insurer has incurred.
- (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each insurer.
  - (a) Except for a financial futures contract and real property acquired and occupied by the insurer for home and branch office purposes, a security or other investment is not eligible for purchase or acquisition under this chapter unless it is:
    - (i) interest bearing or income paying; and
    - (ii) not then in default.
  - (b) A security is not eligible for purchase at a price above its market value.
- (4) Computation of percentage limitations under this section:
  - (a) is based only upon the insurer's total qualified invested assets described in Section 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and
  - (b) excludes investments permitted under Section 31A-18-108 and Subsections 31A-17-203(2) and (3).
- (5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer Receivership Act.
- (6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more persons with authority to make the insurer's investment decisions are "incompetent" as used in Subsection 31A-5-410(3).
- (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Amended by Chapter 297, 2011 General Session

**31A-18-107 Disposal of nonqualified assets.**

- (1) The commissioner may allow a reasonable time, not longer than 10 years, for disposal of any investment which was a qualified asset when made, but which, because of changes in valuation or changes in the insurer's asset mix, is no longer a qualified asset under Section 31A-17-201.
- (2) The commissioner may allow a reasonable time during which an investment which is not a qualified asset may be characterized as one, but only if the investment was made by mistake

or if the forced sale of the asset would be contrary to the interests of insureds, creditors, or the Utah public.

Enacted by Chapter 242, 1985 General Session

**31A-18-108 Investment of excess surplus.**

- (1) If an insurer has excess surplus, as defined under Section 31A-1-301, then to the extent of its excess surplus, the insurer may invest in a manner inconsistent with the limitations of Section 31A-18-106 or in other assets approved by the commissioner.
- (2) This section does not empower any insurer to make investments that are:
  - (a) illegal; or
  - (b) prohibited under Section 31A-4-107.
- (3) Each insurer has the burden of establishing the extent of its excess surplus.

Amended by Chapter 131, 1999 General Session

**31A-18-110 Investment valuation reserves.**

- (1) The commissioner may by rule, applicable to all or any specified classes of insurers, provide for the establishment, in reasonable amounts, of investment valuation reserves that are necessary to lessen the impact on surplus of the fluctuation of the values of specific classes of assets. In formulating these rules, the commissioner shall consider:
  - (a) similar rules used in other states or recommended for use by the National Association of Insurance Commissioners;
  - (b) the propensities of the various types and classes of investments to fluctuate in value; and
  - (c) the present and anticipated investment climate, as measured by economic indicators such as interest rates, price-level changes, market volatility, and economic growth or decline.
- (2) The commissioner may by order require an individual insurer to establish investment valuation reserves in addition to those required for other insurers of the class to which the insurer belongs, to the extent that the financial condition of the insurer and the nature of its assets and liabilities or business require that those reserves be established to adequately protect its insureds.
- (3) Where reasonably possible, reserves required under Subsection (1) shall correspond with those generally required in other states.

Enacted by Chapter 242, 1985 General Session